

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

VINCENT LEE ROBINSON,

Plaintiff,

$$V.$$

MICHAEL E. RILEY, ESQ.,

Defendant.

Civil No. 11-7274 (NLH)

O P I N I O N

APPEARANCES :

Vincent Lee Robinson, Pro Se
190359
Atlantic County Justice Facility
5060 Atlantic Avenue
Mays Landing, NJ 08330

HILLMAN, District Judge

Plaintiff, Vincent Lee Robinson, currently incarcerated at the Atlantic County Justice Facility, Mays Landing, New Jersey, seeks to bring this action in forma pauperis, without prepayment of fees, pursuant to 28 U.S.C. § 1915. Based on Plaintiff's affidavit of indigence and institutional account statement, the Court will grant his application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a) and order the Clerk of the Court to file the complaint.

At this time, the Court must review the complaint pursuant to 28 U.S.C. §§ 1915(e) (2) and 1915A to determine whether it should be dismissed as frivolous or malicious, for failure to

state a claim upon which relief may be granted, or because it seeks monetary relief from a defendant who is immune from such relief. For the following reasons, Plaintiff's complaint will be dismissed.

BACKGROUND

Plaintiff seeks to sue Michael E. Riley, a private attorney currently litigating against Plaintiff in Plaintiff's civil rights action pending in this District Court. See Robinson v. Andrews, et al., 11-cv-252 (JAP). Specifically, Plaintiff accuses Defendant Riley of not properly filing and serving the Answer to the Complaint in the case. Plaintiff filed a motion for default judgment, which was denied.

Plaintiff states that the failure of the defendant to properly serve the Answer caused damage to his reputation, and has jeopardized his position in the case. Plaintiff asks this Court to have defendant Riley's license revoked, and for monetary damages.

DISCUSSION

A. Standard of Review

The Prison Litigation Reform Act, Pub. L. No. 104-134, §§ 801-810, 110 Stat. 1321-66 to 1321-77 (April 26, 1996), requires a district court to review a complaint in a civil action in which a prisoner is proceeding in forma pauperis or seeks redress against a governmental employee or entity. The Court is required

to identify cognizable claims and to sua sponte dismiss any claim that is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915(e)(2)(B); 28 U.S.C. § 1915A(b). This action is subject to sua sponte screening for dismissal under both 28 U.S.C. §§ 1915(e)(2)(B) and 1915A because Plaintiff is proceeding as an indigent and is a prisoner.

In determining the sufficiency of a pro se complaint, the Court must be mindful to construe it liberally in favor of the plaintiff. See Erickson v. Pardus, 551 U.S. 89, 93-94 (2007) (following Estelle v. Gamble, 429 U.S. 97, 106 (1976)); see also United States v. Day, 969 F.2d 39, 42 (3d Cir. 1992).

The Supreme Court refined the standard for summary dismissal of a complaint that fails to state a claim in Ashcroft v. Iqbal, 556 U.S. 662 (2009). The Court examined Rule 8(a)(2) of the Federal Rules of Civil Procedure which provides that a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Citing its opinion in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) for the proposition that "[a] pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do,'" Iqbal, 129 S. Ct. at 1949 (quoting Twombly, 550 U.S. at 555), the Supreme Court held

that, to prevent a summary dismissal, a civil complaint must now allege "sufficient factual matter" to show that the claim is facially plausible. This then "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Fowler v. UPMC Shadyside, 578 F.3d 203, 210 (3d Cir. 2009) (citing Iqbal, 129 S. Ct. at 1948).

The Supreme Court's ruling in Iqbal emphasizes that a plaintiff must demonstrate that the allegations of his complaint are plausible. See Iqbal, 129 S. Ct. at 1949-50. See also Twombly, 505 U.S. at 555, & n.3; Warren Gen. Hosp. v. Amgen Inc., 643 F.3d 77, 84 (3d Cir. 2011). "A complaint must do more than allege the plaintiff's entitlement to relief. A complaint has to 'show' such an entitlement with its facts." Fowler, 578 F.3d at 211 (citing Phillips v. County of Allegheny, 515 F.3d 224, 234-35 (3d Cir. 2008)).

B. 42 U.S.C. § 1983

A plaintiff may have a cause of action under 42 U.S.C. § 1983 for certain violations of his or her constitutional rights. Section 1983 provides in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party

injured in an action at law, suit in equity, or other proper proceeding for redress

Thus, to establish a violation of 42 U.S.C. § 1983, a plaintiff must demonstrate that the challenged conduct was committed by (1) a person acting under color of state law and (2) that the conduct deprived him of rights, privileges, or immunities secured by the Constitution or laws of the United States. See Parratt v. Taylor, 451 U.S. 527, 535 (1981), overruled in part on other grounds by Daniels v. Williams, 474 U.S. 327 (1986); Adickes v. S.H. Kress & Co., 398 U.S. 144, 152 (1970); Piecknick v. Pennsylvania, 36 F.3d 1250, 1255-56 (3d Cir. 1994).

C. Plaintiff's Complaint Will Be Dismissed.

Plaintiff fails to establish a violation of § 1983. First, defendant is not a state actor. Although not "immune" from suit or liability, an attorney may be entitled to dismissal of a civil rights action on the ground that it fails to state a claim, because lawyers, typically, are not "state actors." "[A] lawyer representing a client is not, by virtue of being an officer of the court, a state actor 'under color of state law' within the meaning of § 1983." Polk County v. Dodson, 454 U.S. 312, 318 (1981); see also Angelico v. Lehigh Valley Hospital, Inc., 184 F.3d 268, 277 (3d Cir. 1999).

Second, Plaintiff's complaint does not state a claim upon which relief may be granted. Plaintiff fails to identify a

constitutional right violated by defendant. In fact, a review of the docket of his civil rights case at issue reveals that Plaintiff requested, and the Court granted, a stay of the proceedings. See Robinson v. Andrews, et al., 11-cv-252 (JAP) (docket entries 22, 23). Prior to the entry of the stay order, Plaintiff's case was proceeding in the normal manner of civil cases in this District Court. Plaintiff's motion for default was considered and denied, the District Judge finding that Plaintiff admitted he received the Answer. Plaintiff points to no facts demonstrating, under the Iqbal standard, supra, that his constitutional rights have been violated.

This Court finds no basis to award damages or any other type of relief to Plaintiff based on the facts presented in his complaint. Plaintiff has not named a state actor, nor has he asserted a violation of a constitutional right to warrant relief from this Court.

CONCLUSION

Based upon the foregoing, Plaintiff's complaint will be dismissed. The Court will file an appropriate order.

s/ Noel L. Hillman
NOEL L. HILLMAN
United States District Judge

Dated: July 2, 2012
At Camden, New Jersey